

Letter of Findings Number: 03-20170159
Withholding Tax
For Tax Years 2013-2015

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Employer provided sufficient documentation to establish that it did withhold a portion of county income tax for one employee for one year. However, the remaining withholding tax assessments remain due. Waiver of penalty was warranted.

ISSUES

I. Withholding Tax—Imposition.

Authority: IC § 6-3-4-8; IC § 6-8.1-5-1; *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); [45 IAC 3.1-1-97](#).

Taxpayer protests the assessment of county withholding tax on wages it paid to its employees.

II. Tax Administration—Penalty and Interest.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is a manufacturer of automotive parts. Taxpayer is a company organized in another state with a manufacturing plant and warehouse located in Indiana. The Indiana Department of Revenue ("Department") conducted an audit of Taxpayer's withholding tax returns for the 2013-2015 tax years and determined that Taxpayer did not withhold Indiana county tax from some of its employees for these years. As a result, the Department issued proposed assessments for county withholding taxes as well as penalty and interest. Taxpayer protested assessments of withholding tax for one employee and the entirety of the penalty. An administrative hearing was conducted, and this Letter of Findings results. Additional facts will be provided as necessary.

I. Withholding Tax—Imposition.

DISCUSSION

Taxpayer protests the calculation of Indiana county withholding tax regarding wages it paid to one employee ("Employee") for the 2013 tax year. Taxpayer argues that some tax was withheld from Employee and thus should be factored into the Department's calculations of tax owed.

As a threshold issue, it is the taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

IC § 6-3-4-8 provides, in part, as follows:

(a) Except as provided in subsection (d), every employer making payments of wages subject to tax under this article, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department. The department shall base its withholding instructions on the adjusted gross income tax rate for persons, on the total rates of any income taxes that the taxpayer is subject to under [IC 6-3.5](#), and on the total amount of exclusions the taxpayer is entitled to under [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#). However, the withholding instructions on the adjusted gross income of a nonresident alien (as defined in Section 7701 of the Internal Revenue Code) are to be based on applying not more than one (1) withholding exclusion, regardless of the total number of exclusions that [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#) permit the taxpayer to apply on the taxpayer's final return for the taxable year. Such employer making payments of any wages:

- (1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from the individual's wages and paid over in compliance or intended compliance with this section; and
- (2) shall make return of and payment to the department monthly of the amount of tax which under this article and [IC 6-3.5](#) the employer is required to withhold.

The relevant regulation, [45 IAC 3.1-1-97](#), states that employers must "withhold [F]ederal taxes pursuant to the Internal Revenue Code," and are also "required to withhold from employees' wages Adjusted Gross and County Adjusted Gross Income Tax."

Therefore, employers such as Taxpayer are required to withhold adjusted gross and county adjusted gross income tax from payments of wages made to its employees.

Taxpayer requests to be credited for the county tax withholding of one employee. For this employee, Taxpayer has provided sufficient documentation in the form of the employee's W-2 reflecting that a portion of the county taxes due had been withheld. Thus, Taxpayer should be credited in the amount withheld (\$475.89), allowed a personal exemption, thus leaving a remaining balance of county withholding tax due of \$427.28 for this employee. Taxpayer has therefore met the burden imposed under [IC 6-8.1-5-1\(c\)](#) of proving the proposed assessments wrong regarding this employee.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration—Penalty and Interest.

DISCUSSION

Taxpayer protests the imposition of penalties pursuant to IC § 6-8.1-10-2.1. The Department notes that waiver of interest is not permitted under IC § 6-8.1-10-1(e). Penalty waiver is permitted if the taxpayers show that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. [45 IAC 15-11-2\(b\)](#) clarifies the standard for the imposition of the negligence penalty as follows:

"Negligence", on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Accordingly, IC § 6-3-4-8(a) specifically requires an employer to "withhold, collect, and pay over income tax on wages paid by such employer to such employee . . . [in] the amount prescribed in withholding instructions issued by the department." IC § 6-3-4-8(a)(1) specifically provides that the employer is "liable to the state of Indiana for the payment of the tax required to be deducted and withheld." IC § 6-3-4-8 specifically provides that the employer is liable for the amount that it was required to withhold. These statutory requirements for the employer to withhold the amount prescribed in the Department's withholding instructions and for the employer to become liable for the amount it is required to withhold are restated in [45 IAC 3.1-1-97](#). "Employers who make payments of wages

subject to the Adjusted Gross Income Tax Act, and who are required to withhold Federal taxes pursuant to the Internal Revenue Code (USC Title 26) are required to withhold from employees' wages Adjusted Gross and County Adjusted Gross Income Tax." *Id.* The regulation then goes on to state, "In the case of delinquency or nonpayment of withholding tax, the employer is liable for such tax, penalties, and interest." *Id.*

Generally, the Department will waive penalty in the event of an unusual error and a good compliance record. [45 IAC 15-11-2\(c\)](#) explains that:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer maintains that even though it did not meet its responsibility to properly withhold county tax from every employee cited in the audit report, the Department should waive the penalty due to the Taxpayer's good-faith effort to comply with regulations. Taxpayer remitted 99.8 percent of total withholding tax due for all tax years. Taxpayer has affirmatively established that it exercised ordinary business care in this case. Therefore, waiver of penalties is warranted under [45 IAC 15-11-2\(c\)](#). Therefore, penalties will be waived. Also, while interest cannot be waived, as provided by IC § 6-8.1-10-1(e), interest will be recalculated to reflect the lower amount of withholding tax due, as explained in Issue I.

FINDING

Taxpayer's protest to the imposition of penalties and interest is sustained in part and denied in part.

SUMMARY

Taxpayer's Issue I protest regarding the imposition of withholding tax is sustained regarding the partial payment. Taxpayer's Issue II protest regarding the imposition of penalties and interest is sustained in part and denied in part.

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An [html](#) version of this document.